QUID NOVI

Journal des étudiant-e-s
en droit de l'université McGill

McGill Law's
Weekly Student Newspaper

Volume 34, nº7
13 novembre 2012 | November 13th 2012

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3661 Peel Street
Montréal, Québec H2A 1X1

http://quid.mcgill.ca/

WHAT'S INSIDE?
QUEL EST LE CONTENU?

WANT TO TALK?
TU VEUX T'EXPRIMER?

Envoyez vos commentaires ou articles avant jeudi 17h à l'adresse : quid.law@mcgill.ca

Toute contribution doit indiquer le nom de l'auteur, son année d'étude ainsi qu'un titre pour l'article. L'article ne sera publiée qu'à la discrétion du comité de rédaction, qui basera sa décision sur la politique de rédaction.

Contributions should preferably be submitted as a **.doc** attachment (and not, for instance, a ".docx").

Co-Editor in Chief

AARON FERGIE

THE SOUL OF SOCIETY

Getting through exam preparation can be trying, and it is under such circumstances that many won't question why, exactly, they are going through all the trouble. I believe having a clear response to this sort of questioning is one of the best panaceas against the stresses and strains following difficulty, for a grasp of why one is doing what they are doing is the surest route to internal motivation. And you know what they say... "I think I can, I think I can..."

So, while I believe that this sort of motivation is best drawn from the depths of one's own Soul (see below), I here attempt to provide a kick-start to motivation if you needed one, and one more good reason to be motivated if you've already got it figured out!

As a lawyer (if you go that route) or at least one versed in the legal ways, you will be among those privileged few who may tend the Soul of Society (a.k.a. the Law). This is exciting because Souls are important things! If they weren't, there wouldn't be so many people hung up about whether or not they persist after we die. And if the Soul of a single person is important, a fortiori so must be the Soul of something bigger (i.e., a Society).

Yet, before I get to questioning how many Souls might dance on the head of a pin (for a later installment), what I mean by the 'Soul' of a thing is, to borrow heavily from Aristotle, its essential form. You may be an atheist and perfectly well believe that things have Souls in this sense. Even the exams you are preparing to write have Souls: that perfect form you are striving to develop your powers to produce. (Surely, your exam is hardly what it is meant to be insofar as it falls short of this standard!)

You can also think of a Soul as the blueprint of a thing, like DNA. Your DNA contains much of the crucial information about the sort of person that you will unfold towards in life, about the person you will ultimately become.

So, the Soul is not merely the 'what' of it, but also the 'why' of it. Not only what the thing is and will become, but also why it becomes that thing... This explains why it is important to plumb the depths of one's own Soul in search of answers to fundamental questions about why we strive to do well (or at least not worse than average) on Law School Exams: in a fashion it's written in who you are.

As importantly, this also shows why you should be keyed up about studying the Law! The Law is the blueprint or form of the Society that we live in; the Soul of Society. It represents what our Society could be, and should be. Sure, it needs constant TLC, but that's where you come in! With a law degree in hand you will be well-placed to understand the Soul of Society, and make it the sort of place you want to live in.

The charge may be onerous at times, yet the fruits of success are simply the best!

So, after you've had a chance to read through this issue of the Quid Novi, you should have ample reason to get back to work! Enjoy your chosen path!

Law II

DATUM ERRATUM

MITT ROMNEY FOR LIBERAL LEADER!

The results of the just-concluded U.S. Presidential race, in which Democratic incumbent Barack Obama triumphed over Republican challenger Mitt Romney by a narrow margin of 52 to 48 per cent, gave me pause to reflect on the increasingly polarized nature of politics not only south of the border, but here in Canada.

Many have said U.S. political polarization is natural, even inevitable, given that country's two-party electoral system. Americans have rarely embraced third-party political movements over their history, whereas such movements have been quite popular here in Canada.

So popular, in fact, that the traditional "third party" in Canadian politics, the NDP, now finds itself in the position of having usurped the Liberals as Her Majesty's Loyal Opposition in the House of Commons.

Is the nasty divisiveness of U.S. politics inevitable? I'm not so sure. Despite the contentious "mano-a-mano" nature of the two-party system, the fact remains that "bipartisanship" (the peculiar word that U.S. legislators use to describe "cooperation") was widely prevalent throughout Congress and the White House until the start of Bill Clinton's Presidency in 1993.

Coincidentally, that was also the year the wheels fell off the old Progressive Conservative bus here in Canada. The federal election that year saw the Tories reduced to a two-seat rump in the House of Commons, while their estranged kissing cousins in the upstart Reform Party swept much of the West, winning 52 seats.

Still, as Joe Clark once observed, "It's not how big your caucus is that matters, it's what you do with it." So the ruined Tory machine did its best to soldier on, despite its decimation on the electoral battlefield.

These days, the federal Liberal Party is facing much the same situation as that of the PCs a generation ago, in the wake of their election debacle. Of course, the Liberal result in the 2011 election was not quite in the two-seat range – instead, they merely lost more than half their seats, and were left with a smattering of 34 MPs.

This result was an unprecedented disaster for the Liberals. Sure, they didn't do much better in 1984, when John Turner served as an anti-Trudeau whipping boy for the Canadian people, and led the Liberals to a then-calamitous 40-seat finish.

The silver lining in the 1984 election, of course, was that the Liberals held onto Official Opposition status, despite their poor showing – because the NDP did even worse. No such luck for the Liberals in 2011, when the NDP succeeded in winning nearly three times as many seats as their long-time rivals.
The symbolic importance of being the Official Opposition cannot be overstated. Being "number two" naturally places one first in line to the throne, should the incumbent government ever provoke the ire of 1) Parliament (highly unlikely) or 2) the Canadian people (who are not easily moved from their natural state of apathetic disinterest in all matters political).

The Liberals no longer have that trusty weapon in their arsenal. But they believe they possess an even more compelling weapon that will persuade Canadian voters to return to their natural home within "Canada's Government Party."

Their argument goes something like this: "The two-party system has terminally polarized U.S. politics, leading to legislative gridlock and economic damage. Canada is facing the same polarized future, with a hard-right Conservative government and a left-wing socialist NDP that cannot be trusted with power. The Liberals are the only party that represents the moderate middle – that place on the political spectrum that represents everything good and productive about the Canadian people."

It's a kind of "Goldilocks" strategy – the Liberals want to market themselves as not too hot, not too cold, but juuuuuust right. After all, who can argue with political porridge that fills you up without burning your mouth or forcing you to eat cold slop?

And who is the candidate – the Goldilocks-in-waiting – who promises to lead the once-mighty, now-unsightly Liberal Party back to the Promised Land, the Land of deliciously warm porridge for one and all? Why, none other than Brunilocks himself, Justin Trudeau – the Man with the Hair Who Cares™.

I have my doubts.

No, not that Trudeau can win the Liberal leadership – that seems all but a given, unless Dalton McGuinty should decide to throw his hat in the ring (LMAO!).

What I doubt is whether the Liberal Party is of much use to Canada anymore. While there is something admirable – noble even – in attempting to occupy the "moderate middle" of the political spectrum, the Liberals are way too jaded, and far too implicated in seedy goings-on at the federal and provincial levels, to be able to pull off such an act. Yes, Jean Chrétien was able to do it back in 1993. But when you're up against a foil like Brian Mul-

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roney, it doesn't take much.

The Liberals have no such foil this time around. And their arguments of moderation ring hollow, given that the party has no apparent policies on anything, other than "not" being the Harper Party – a pretty weak platform that Michael Ignatieff spent three years perfecting during his daily waffle in the Commons.

I suppose the platform (or lack thereof) could be fixed. But my much bigger problem is with the deeply entrenched culture of the Liberal hierarchy, the party's power structure. The Liberals were dealt humbling blows by voters in the 2006, 2008 and – especially – 2011 campaigns. Yet I have yet to see evidence that the party feels humbled in any discernible way. I've seen no indication the party has turned its gaze inward for an honest assessment of its deficiencies and (dare I say it) an arrogant, ingrained sense of entitlement to power.

And the Liberals' problems don't end there. Where does Mr. Trudeau intend to focus his party's badly-needed revitalization efforts? Let's examine the country.

The Libs are dead in BC, with the exception of a few pockets in the Greater Vancouver area. They are uber-dead in Alberta and Saskatchewan. They are dead in Manitoba, other than one or two pockets in Winnipeg.

They are in disarray in most of Ontario, especially with the "Dalton Albatross" hanging around their necks. They are dead in Quebec outside of Montreal. And they are in decline across much of Atlantic Canada, with the NDP poised to make major gains in that region, if the polls are any indication.

In short, the Liberal brand is a badly tarnished one. This is reflected in the Liberal record at the provincial level, where the party is now government in only three provinces: PEI, Ontario and BC. The latter two governments are so unpopular they face almost certain defeat at the polls.

The need for political, policy and organizational renewal – not to mention moral/ethical renewal – thus plagues the Liberal Party at both the federal and provincial levels.

Meanwhile, a well-organized, well-funded, clearly-focused and well-led NDP goes about its business methodically in Ottawa and the provinces, governing well where elected to do so, and opposing ably when called upon to serve in opposition. There is little sign of left-wing dogma in NDP governments in Manitoba and Nova Scotia, and many signs of pragmatic moderation. So much for the Liberal Party's claim to the "moderate middle"of Canadian politics.

My colleague Chris Durrant put it very nicely, I think, when he recently observed that "the Liberal Party is the Mitt Romney of Canadian politics." This little quip gave me a good laugh, but I think he has a valid point.

Moderation and compromise in politics (as in life) can be a wonderful thing. But the credibility and trustworthiness of the messenger matters. That is why Mr. Romney's wavering and waffling and backpedalling ultimately rang hollow with the American people. And it's why I suspect Justin Trudeau's enthusiastic marketing of the new "Liberal vision" will ultimately ring hollow with Canadians too.

Law II

A PERSPECTIVE ON PASSIVE BILINGUALISM

Chères amies et chers amis,

Comme vous le savez peut-être, le Comité des langues officielles a mené au cours des derniers mois des consultations dans le cadre d'un examen de la Politique linguistique de 1992 de la Faculté de droit. La Faculté a beaucoup changé au cours des vingt dernières années, notamment avec la mise en œuvre complète de notre programme transsystémique, et par conséquent, plusieurs étudiants se sont exprimés sur la nécessité d'adopter une nouvelle politique linguistique. C'est la raison pour laquelle le Comité sollicite continuellement des commentaires des étudiants sur cette question. Nous espérons produire une nouvelle politique dans un avenir rapproché.

The task of creating a new linguistic policy is one that requires much input from both students and staff. The Committee had the opportunity to meet with Dean Jutras on October 31, 2012, to share some of our concerns regarding the use of English and French at the Faculty. The Committee was very pleased to have this opportunity to speak with the Dean and we look forward to a continuing dialogue on the issue. We are also pleased to see that the issue of bilingualism is one of the topics of discussion

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for the Dean's series of lunches taking place this year.

La démarche de la Faculté à l'égard du bilinguisme est bien différente aujourd'hui de ce qu'elle était en 1992. Bien que la Politique linguistique de 1992 stipule que la qualification « bilingual » à la Faculté « [is] not meaningful », la Faculté embrasse aujourd'hui l'idée du « bilinguisme passif », soit l'importance de pouvoir comprendre le français et l'anglais. La valeur d'étudier le droit dans ces deux langues est souvent le sujet de discussion dans les théories de l'éducation juridique. L'importance de « l'environnement bilingue » de la Faculté est aussi soulignée dans le Guide des programmes de la Faculté.

Passive bilingualism, however, can mean different things to different people. I, like many other students, came to McGill due to the opportunity to study law in both languages, something that is not offered at many schools in Canada. But for myself personally, bilingualism in either an active or a passive form, has always involved more than the comprehension of both English and French. Rather, I believe that bilingualism also includes an openness to understanding another culture and identity. Chief Justice Dickson once wrote:

> Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is[...] a means by which a people may express its cultural identity It is also the means by which [an] individual expresses his or her personal identity and sense of individuality (Ford v Quebec (AG), [1988] 2 SCR 712 at 748-749).

Language is intimately tied to one's identity and it is for this reason that I feel that bilingualism is more than just understanding two languages. Passive bilingualism at the Faculty, for me, represents demonstrating a mutual respect for both linguistic communities and for the equality of both the English and French languages.

Le Doyen a encouragé tous les étudiants à partager ouvertement ce que le bilinguisme représente pour eux. J'encourage tous les étudiants à participer à ce dialogue et à partager leur avis. J'ai bien hâte de continuer à travailler avec le Comité, l'administration de la Faculté et avec tous les étudiants dans ce processus de création d'une nouvelle politique linguistique.

Bien à vous,
Dominic DiFruscio

Law III

JULIA O' BYRNE

RULE ENFORCEMENT (OR THE LACK THEREOF) AT McGILL LAW

Over the course of this semester, the ways that rules are enforced arbitrarily at the McGill law school (something I have noticed since first year) has started to bother me much more. I read Molly Krishtalka and Adrian Thorogood's articles from the October 30th Quid with interest. It's great Adrian is happy to discuss the McGill Journal of Law and Health's finances with "any student who cares to ask." Molly also encouraged students to come to her journal's third floor office and speak with her directly. The problem is - students shouldn't have to go directly to Adrian or Molly to find out about the journals' budgets. When preparing for the Innocence McGill referendum earlier this semester, my co-director and I read article 83 under LSA By-law 12 on Student Initiated Fees with surprise. It says: "83. Any Designated Student Group receiving a student fee collected by the Corporation for its exclusive use shall publish in the Quid Novi by March 20th of each year an annual report including financial statements and information on activities undertaken during the preceding academic year. This report will be endorsed by the most senior officer of the Designated Student Group." We then checked back to last winter's Quids but did not find annual reports from any of the journals or from Innocence McGill. These annual reports are a good idea. Accountability makes sure that journals and law clinics use their money wisely and are willing and ready to justify their choices.

Adrian is right that his journal's budget could be reduced to very little if the student body votes down the mandatory fee during the next referendum (the same goes for Innocence McGill). But if students actually know - by way of an annual report - how their money is spent, they will be able to make a more informed decision about whether to vote for the mandatory fee or not.

Why does the LSA keep this provision in its by-laws if it does not intend to ever enforce it? Were there any consequences for IM for failing to provide this annual report in the Quid last year (or likely the year before, etc.)? No. And there were likely zero consequences for the journals either. In

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fact, it sounds like Adrian, Molly and last year's IM director were probably unaware that this requirement even existed. That by-law was put there for good reason, however, and it is up to the LSA to actually see that its by-laws are respected, otherwise they seem - and are - meaningless.

The same type of thing happened with Dean's Discretionary Funding (DDF) in the winter of 2012. In paragraph 10 of the DDF application form, it says: "Parties that receive funding from the DDF are required to write an article in the Quid about the event or activity, acknowledging the support of the DDF." (Bold in original). Paragraph 11 then says that evidence of this Quid article must be submitted along with receipts for reimbursement or else the student will not be reimbursed. In winter 2012 editions of the Quid, only the Equality Effect, the Sexual Assault Law Seminar, the Women's Caucus and SALDF wrote articles about the events the DDF helped them put on and gratefully acknowledged the support of the DDF. I highly doubt that these four groups were the only ones who received DDF funding. I also doubt that other groups that received DDF funding were denied their reimbursement based on not having written a Quid article. Again, what is the point of having such a requirement if it is not going to be enforced? The people behind the DDF may as well take that requirement out of the application form.

Perhaps this ignoring of the rules would bother me less if other rules weren't used to justify actions I find unnecessary and mean-spirited. During the elections for the 2012-2013 LSA exec in March 2012, the CRO publicly sanctioned (read shamed) a student running for one of the LSA VP positions in an email sent out to the entire law school because this student began campaigning before the official campaign period began. When I emailed the CRO to ask why he had felt the need to send such an email to everyone instead of just telling the student in question that he shouldn't have done that, I received a reply citing LSA by-law 78(g) in which the Chief Returning Officer "has the discretion to disqualify, publicly censure, or otherwise sanction a candidate for serious infractions of the electoral By-laws." I appreciated the CRO writing me back, and it's true that he acted within his LSA by-law's prescribed authority. It just bothered me that the rules were being used to justify behaviour that seemed completely unnecessary and that those same rules are mostly forgotten and/or ignored when it comes to other matters.

The LSA should make one of their priorities for the rest of this academic year an updating of their by-laws. Some suggestions are floating around about updating the by-laws to allow online campaigning for LSA elections and referendums. While doing that, the LSA should consider either deleting the by-laws they choose not to follow, or start enforcing them.

DANIEL MASTINE

Law II

A LAW STUDENT'S PRAYER

(Disclaimer - Apologies to Alcoholics Anonymous)

God,

Please grant me the grace to accept with serenity
those readings that cannot be read,
the courage to change the bad habits,
which should be changed,
and the wisdom to distinguish,
the necessary attendance classes from those truly optional.

Living one sleep deprived night in the library at a time,
enjoying every legal meth/ethics free moment,
Accepting without complaint,
300 plus pages of readings per day and no life,
as a law student's pathway to peace.

Taking, just as Lords Denning and Wilberforce did,
these sinful syllabi as they are,
not as I would have them,
yet trusting that the faculty marking scheme will make all things right,
though knowing it won't.

So that I should surrender, resigned to my fate,
seeking to be "reasonably happy" in this life,
though more likely only in the next.

Amen

CHARLOTTE-ANNE MALISCHEWSKI & ERIN MOORES

NEW PUBLICATION SEEKS CONTRIBUTORS: WOMEN'S VOICES IN THE LAW

We're looking for contributors! Along with a group of women students and faculty members, we are creating a publication containing original pieces written by women that explore women's relationship with the law.

Il ne serait pas exagéré de dire que depuis le début de nos études en droit à McGill il y a deux mois, la quantité de lectures que nous avons fait dépasse celle de l'année 2012 en entier. Il ne serait pas non plus une exagération de dire que la majorité de ces lectures ont été écrites par des auteurs masculins. Nous comprenons pourquoi, bien sûr. Dans l'histoire du droit, les hommes de pouvoir ne permettaient tout simplement pas aux femmes, avant très récemment, de jouer un grand rôle dans l'élaboration du droit et des lois qui régissaient si profondément leur vie.

Many groups' voices are missing from the story of the law. This is one of the reasons we decided to create this publication, as a deliberate space for women to express their views, interests, and experiences. Our project interprets this theme of 'women and the law' broadly, because all experience and insight has value. The experience of a female professor who has taught here for twenty years can tell us about what has changed for women in the faculty in that time. A woman who wears the niqab can tell us how legal restrictions on where this garment can be worn have affected her possibilities for employment. The woman who was arrested while participating in a peaceful protest has an important story about the law, too.

Au cours du dernier siècle, beaucoup de choses ont changé pour les femmes, et ce, rapidement. Cela soulève beaucoup de nouvelles questions pour les femmes qui étudient, pratiquent et interagissent avec le droit dans leur vie quotidienne. D'autre part, un bon nombre de vielles questions sont toujours avec nous, irrésolues. Au cours des deux derniers mois, nous avons eu et entendu de nombreuses discussions avec nos collègues féminines au sujet de leurs préoccupations professionnelles, par exemple. Serons-nous capables d'avoir des enfants et réussir en tant que professionnelles en droit? Allons-nous être victimes de discrimination? Comment pouvons-nous négocier avec nos employeurs pour obtenir le même salaire que nos homologues masculins obtiendront? La seule façon de trouver des réponses est de parler, de dialoguer, de partager et d'apprendre les unes des autres.

Another purpose of the project is to learn about and celebrate some of the achievements of female graduates of law at McGill. Their lives will also tell us more about the story of women and the law, and will hopefully inspire everyone who reads their stories, both male and female.

Nous envisageons une publication contenant une variété de types d'écriture, y compris des entrevues, des articles de presse, des textes d'opinion, des récits personnels et des pièces académiques. Nous encourageons nos collaborateurs à s'exprimer de la manière qui convient le mieux à leurs objectifs.

The idea for this project emerged from the need that we, as first year students, recognized in the Law faculty. We have witnessed many women in the faculty express concerns about reconciling their careers with family life, succeeding as women in a variety of public and private legal fields, and overcoming discrimination in the work force. Our proposed publication will address these concerns. Since we first proposed the idea to our classmates, we have received a great deal of positive feedback from students, some of whom are interested in contributing to the publication and others who are excited about the possibility of availing themselves of such a resource.

Through this publication, we intend to address topics surrounding women and law. We anticipate the publication may include theoretical pieces, commentary on jurisprudence and current legal issues, personal narratives, interviews, and creative writing. In soliciting contributions from students and faculty, we have suggested three topic areas to help generate ideas. The first topic is the role of women at McGill's law faculty, which could include contributions about the history of women in the faculty and interviews with female alumni in different fields. The second topic is experiences of women in different legal careers. We anticipate that several contributors will pay particular attention to family life implications of different legal education and career options. The third topic is a broader look at the way women experience the law in gendered ways, leaving room for contributions from students on a range of local and international issues. The extent to which each of these three topics are explored in the publication will depend on the interests and concerns of those contributing. In the end, the format and content of the publication will reflect the work of our contributors. We intend to launch the publication in the second week of classes in January at an event with some of the female jurists from the community that will be interviewed for or will have contributed to the publication.

It is our hope that this project will contribute to this year's LSA goal of using our education to contribute to our communities as well as contributing to the fostering of a positive and supportive environment for female students in the faculty. We hope that

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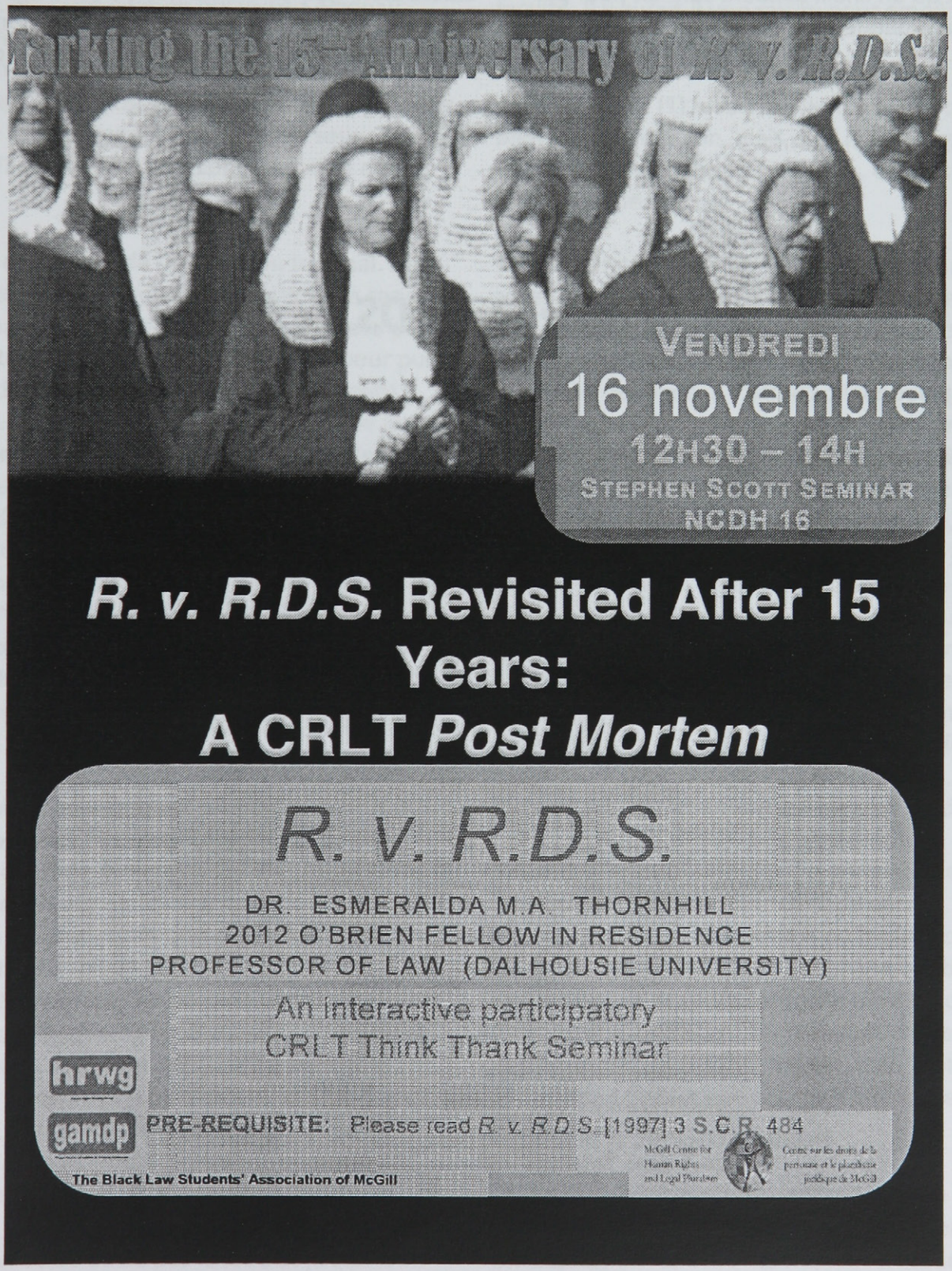
the process of writing and researching will create links between students and faculty members as well as with the broader community. The publication will be tailored to respond to the needs of students in our faculty and will be available more broadly for those outside the faculty who may also be interested in these issues in print and electronic form.

So, do you want to write something? It doesn't matter if you have a topic idea already or if you want to contribute, but don't know what to write about.

We've had great feedback from the students and faculty members to whom we proposed this idea and have been very encouraged by the enthusiasm of those who have responded to our first calls for contributions. We're still looking for more contributors, ideas, and people who want to be involved in some way, so please contact us if you're interested!

An information meeting will be held on Wednesday, November 14 from 12:30pm-1:30pm in Room 316 for all current contributors and anyone interested in participating!

We welcome your involvement and suggestions at:
Charlotte-Anne Malischewski:
charlotteanne.malischewski@mail.mcgill.ca.
Erin Moores: erin.moores@mail.mcgill.ca



MICHAËL LESSARD

GND: LA SENSIBILITÉ DU JUGE, OU COMMENT UTILISER JFK DANS UN ARGUMENTAIRE

L'ensemble du débat a commencé ici, au mot « boycott ». Le choix de cet anglicisme est inévitablement délibéré. Pourquoi utiliserait-on un terme déconseillé par l'Office québécois de la langue française ? Pourtant cet organisme accepte depuis 1984 les vocables « grève politique » et « grève à caractère politique » ou même ses variantes reconnues par Le Petit Robert comme « grève étudiante ». Il faut qu'un choix délibéré soit fait pour parler d'un boycott et ce qui explique ce choix est une vision politique particulière.

Ce qui est inquiétant, c'est de lire ce mot dans l'injonction provisoire du 12 avril 2012 émise par le juge Lamelin qui vise à garantir l'accès à Jean-François Morasse et ses collègues étudiant en arts plastiques à l'Université Laval [http://bit.ly/XbyK1M]. Ou même dans la deuxième injonction de cette affaire ordonnée par le juge Émond le 2 mai 2012 [http://bit.ly/SJ1fyA]. Le juge considère alors que les étudiants ne possèdent pas un droit de grève au Québec. Il va sans dire que cette décision est fortement critiquée. La jurisprudence prévient d'ailleurs que les injonctions ne

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doivent pas être utilisées pour donner un plus grand pouvoir de négociation dans une joute politique même si c'est en faveur du gouvernement [Saint-Joseph-de-Sorel c Sorel (CSQ, 2000)]. Aussi, l'article académique de Brunelle, Lampron et Roussel semble suggérer que la question de la grève étudiante mérite un examen juridique beaucoup plus complet que ce qui a été fait par les Cours [http://bit.ly/XbyDmM]. Mais, ce n'est pas la question qui nous interpelle aujourd'hui.

Ce qui est d'actualité sont plutôt les propos tenus par Gabriel Nadeau-Dubois le 13 mai 2012 : « [...] Donc nous, on trouve ça tout à fait légitime là, que les gens prennent les moyens nécessaires pour faire respecter le vote de grève et si ça prend des lignes de piquetage, on croit que c'est un moyen tout à fait légitime de le faire. » C'est cette citation qui valut à Nadeau-Dubois d'être condamné pour outrage au tribunal envers la dernière injonction ci-mentionnée le 1er novembre 2012 par le juge Denis Jacques [http://bit.ly/Qg2HM0] qui parfuma son jugement d'une citation de John F. Kennedy qui a fait le tour des médias [http://bit.ly/SCK7Nr]. Et c'est cette condamnation qui me semble absurde.

Voyons d'abord quelle est l'utilité de l'outrage au tribunal. Dans son envie d'exhaustivité, le juge Jacques explique que la sanction pour outrage au tribunal vise à protéger la confiance de la population envers l'administration de la justice. On l'utilise pour punir les violations directes des injonctions et les actions menant à une violation indirecte. Cependant, il est troublant que le juge Jacques n'ait pu relever qu'un seul exemple où les simples paroles d'une personne lui ont value une condamnation. Il s'agit de l'emprisonnement des chefs syndicaux du Front commun en 1972, soit Charbonneau, Pépin et Laberge. Il s'agissait alors d'un emprisonnement symbolique, car ces chefs syndicaux n'avaient pas directement violé l'injonction. En fait, ils furent condamnés pour les paroles de Charbonneau : « nous n'avons donc pas l'intention de recommander à nos groupes de respecter les injonctions qui, à notre avis, sont illégales puisque déjà le Front commun en a appelé à la Cour suprême ».

Alors que la condamnation pour outrage au tribunal sert à protéger la confiance en la justice, il semblerait normal de condamner une personne qui viole directement cette injonction, ou même qui le fait indirectement. Mais est-il juste de condamner une personne pour ses paroles plutôt que ses actions ? Jean Cournoyer, alors Ministre du Travail en 1972, s'exprimait d'ailleurs ainsi sur ces événements : « Un pays civilisé comme le nôtre qui met trois de ses dirigeants syndicaux [...] derrière les barreaux. La façon dont ça peut être interprété à travers le monde, c'est que nous ressemblons plus au Chili qu'à la France » [http://bit.ly/hejgJD]. Et avant même de condamner ces chefs syndicaux ou Gabriel Nadeau-Dubois, n'y aurait-il pas moralement beaucoup d'autres discours à condamner ? Des discours homophobes, sexistes, racistes, ou simplement sadiques ?
La justice québécoise a décidé de ne pas le faire et je suis d'accord avec elle. Nous avons décidé que la liberté d'expression était plus importante que l'unicité de l'opinion politique. La Cour suprême du Canada s'exprime ainsi dans SDGMR c Dolphin Delivery (CSC, 1986) : « [La liberté d'expression] constitue l'un des concepts fondamentaux sur lesquels repose le développement historique des institutions politiques, sociales et éducatives de la société occidentale. La démocratie représentative dans sa forme actuelle, qui est en grande partie le fruit de la liberté d'exprimer des idées divergentes et d'en discuter, dépend pour son existence de la préservation et de la protection de cette liberté. »

Quoi de plus fondamental pour l'avancement de la démocratie québécoise que de se questionner sur les décisions du système juridique ? C'est ce que tous les étudiants de droit font dans leur faculté. Il y aurait-il une raison pour empêcher Gabriel Nadeau-Dubois de le faire ?

Il y en a deux : (1) le fait que Nadeau-Dubois n'exprime pas simplement une opinion, mais qu'il incite à agir dans un certain sens et (2) son rôle politique. Toutefois, ces raisons sont invalides de mon point de vue.

Premièrement, nous savons que l'outrage au tribunal vise à protéger la confiance envers la justice. Dans le cas de Gabriel Nadeau-Dubois, sa sanction n'arrête pas le viol de l'injonction et ne le prévient pas. Il s'agit de faire une condamnation symbolique, voir politique. Il s'agit d'arrêter quelqu'un qui parle trop et c'est inacceptable. Même la Cour suprême dans Montréal (Ville) c 2952-1366 Québec Inc (CSC, 2005) établit que tout contenu, quel qu'il soit, mérite d'être protégé. Cependant, la limitation peut se faire dans la forme de l'expression, mais en l'occurrence l'expression semble tout à fait civilisée. Le juge Jacques a donc manqué une belle occasion de prendre en considération la jurisprudence qui s'est écrite depuis 1972 que nous venons d'explorer et de rectifier le tir en invalidant le raisonnement qui condamna Charbonneau, Pépin et Laberge. Le juge a donc favorisé une certaine jurisprudence plutôt qu'une autre. Par ce choix, il envoit donc un signal clair et inquiétant : tout message, aussi révoltant qu'il soit, doit être protégé, exception faite de ceux où l'on remet en cause l'appareil juridique.

Secondement, considérant l'importance de la liberté d'expression que la Cour suprême vient de décrire, il semble tout à fait approprié d'exiger des acteurs politiques, comme Gabriel Nadeau-Dubois, de brasser la cabane québécoise en proposant une vision politique en contraste avec le gouvernement en place. Il ne s'agit aucunement de l'apologie d'une violence physique présente dans le conflit étudiant, mais plutôt d'assurer dans un univers de tentions que chacune des parties à ce conflit puisse parler librement.

Au final, le jugement de Denis Jacques me rappelle une autre phrase de John F. Kennedy: « À vouloir étouffer les révolutions pacifiques, on rend inévitables les révolutions violentes ».

CATHERINE OUELLET DUPUIS & CLAUDIA MICHAUD

Law III

AUDACITÉ MONTREAL: MONTREALERS SHOULD DREAM TO DARE AND DARE TO DREAM AGAIN

My father was born into a generation of builders that had the audacity to dream. Indeed, in the 1960s, Montreal was the premiere Canadian city and an internationally renowned destination. It is in this spirit that Place Ville-Marie, the creation of international architect I.M. Pei, rose from exposed train-tracks to dominate Montreal's skyline, which it continues to do a half-century later. Back in those days, Montrealers dared to dream and dreamed to dare.

It was in the same can-do spirit that we built a subway system far ahead of its time. Our Metro was admired and revered by the whole world, by urban planners, architects and tourists because of its quiet rubber tires, cleanliness and artwork.
It was in the same spirit that we snagged the number one International World Exposition for Montreal, now fondly remembered by Montrealers as "Expo 67." The Exposition brought Montreal onto the international stage. With Expo 67 came cutting edge architecture from around the world, such as Moshe Safdie's Habitat 67, Mies van der Rohe's Westmount Square, and Buckminster Fuller's
Geodesic Dome.

It was in that very same spirit that Montrealers went on to compete for the 1976 Olympics... and won, over the bids of Moscow and Los Angeles, bringing the Olympics to Canada for the very first time!

Since then we made some major mistakes. We overspent. And, instead of asking why we lost control of costs, we descended into a collective malaise. Defeated, we decided that to dream was a luxury that we could not afford. We concluded that the construction of the greatest city in the world was simply beyond our reach, and settled for something less than perfection.
So it is in this spirit of cost savings and defeatism that my generation was born. We have grown up without such inspirational projects as Expo 67 and the Olympics, and without the confidence that our beloved city could achieve greatness in the 21st century.
A new icon for Montreal

Montreal-lovers and dynamic young professionals have gathered together and asked themselves what could be done for Montreal to once again become a vibrant, modern, and dynamic city to which the world looks with envy and admiration. It is from there that AudaCité Montréal was born.

AudaCité Montreal believes it is time that we as Montrealers move beyond the defeatist paradigm that has plagued us for the better part of the last three decades. It is time for us to learn from the leaders like Mayor Jean Drapeau and Robert Bourassa who put our great city on the world stage – from both their successes and failures. As Montrealers, we want to dream big again. Where better a place to start than with the reconstruction of the busiest bridge in Canada? Indeed, the construction of the new Champlain Bridge represents a once-in-a generation opportunity to rebrand Montreal on the global scene.

As a non-partisan apolitical association, AudaCité Montreal believes that we ought to stage an architectural competition inviting the best and brightest in the field to bring their creativity and passion to Montreal. A coordinated approach to meeting this great challenge must be adopted, by bringing together all stakeholders in the public, private and para-public sectors, as well as interest groups dedicated to mass transit, electric vehicles, and environmental protection.

For decades Montreal was considered the jewel of the world. For many of us, and for the millions of tourists that have come annually to visit, the Champlain Bridge has been the gateway. Our new bridge must be worthy of our beloved island, and the city which we aspire to create. Montreal deserves no less. But, opportunities come and opportunities go. Decisions regarding the construction of the bridge are being made quickly, and are being made behind closed doors. This is unacceptable. This is our generation's opportunity to put Montreal back on the map. This is our opportunity to build our Sydney Opera House, our Golden Gate Bridge, or our Viaduc de Millau! This is our opportunity to brand Montreal in the 21st century!

And this is why each Montrealer must take the call and stand up together. We want the replacement of the Champlain Bridge to define the way the world looks at Montreal. We don't want plain old good. We want the best because it will bring us tourists but more importantly, we want the best because we want to be inspired. And to those who say "what about the cost?" the most revered and largest private money manager in the country, Stephen Jarislowsky, says "build something great. It will pay for itself for generations to come."

AudaCité Montreal - Who are we?
We are a group of young professionals and students who are united by our love for our great city, Montreal – a city of arts, culture, gastronomy,

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and architectural design. But most of all, we are a group of people that believe in the transformative power of group action. Our mission is to mobilize our community and our governments to conceptualize, design and build a bridge over the Saint-Lawrence that will be an architectural icon of the 21st century.

AudaCité Montréal needs YOUR support. If you believe in our mission please visit our web site at www.audacitemontreal.com and SIGN OUR PETITION. At this time, there is no more valuable contribution you can make than spreading our message. The power for change is in your hands, as it is strength in numbers that will make our mutual dream a reality.

AudaCité Montréal just launched its website a few weeks ago and more activities and ideas are to come. We already have the support of leaders from the business, cultural, architectural and engineering communities. If you are interested in getting involved, or simply have questions or comments, please feel welcome to contact Claudia Michaud (claudia.michaud@mail.mcgill.ca) or Catherine Ouellet Dupuis(catherine.ouelletdupuis@mail.mcgill.ca).

We need to make a difference and this is YOUR opportunity!

Law II

THAT WHOLE "YOU'RE A NAZI" THING

DAVID GROVES

Long ago, in a junior high English class, I was asked to write a short piece on 'my role model'. Of course, I sycophantically picked my English teacher, and was effusive, excessive, and unsparing in my praise – Mrs. Wilson was very intelligent, very kind, very wonderful, the very model of a very ideal pedagogue! Two weeks later, she sat me down, took out a red pen, and angrily crossed out every instance of the word 'very', before handing over a failing grade. Her point (other than that no one loves a lazy suck-up): 'very' should be applied sparingly, if at all. It is a descriptor that, when used very often, becomes very empty, and suggests an emptiness of thought behind it as well. The lesson stung, but it stayed with me, and I think about it every time I hear the H-word.

What H-word? Oh, y'know, Hitler. When it comes to modern political discourse, there is no descriptor more ubiquitous than that of the Führer and his reign. Don't like abortion? It's the holocaust! Worried about PQ language laws? They're jackbooted thugs! Think Harper is cold and autocratic? Why, he might as well grow a tiny little moustache and stop bending his knees when he walks! There's even a rule of internet debate, Godwin's Law, which states that as an online discussion continues, the probability of a comparison involving Nazis or Hitler reaches 100%. No one, it seems, is immune from playing the Hitler card, no matter the stance; unfortunately, it's also about the dumbest card you can play.

The first problem with drawing on Nazism to make your political point is that you are putting your opponent in a position that they cannot possibly respond to. If, in the course of an argument with you over carbon taxes, I suggest that Hitler would have supported them as well, I am saying that either a) you agree with Hitler or b) you must disavow the position you hold in order to not agree with Hitler. You must now rebut this charge – otherwise, it is as if you have accepted the analogy. And so the debate moves to a discussion not of whether a carbon tax makes sense or not, but of what Hitler, a person who probably didn't spend much of his time thinking about carbon at all, would support. The answer? Who knows! He's dead!

The second problem is that, like the word 'very', the overuse of a descriptor renders it rhetorically inert. Nazism is so often thrown around nowadays that it has lost all power or force. It has come to exist not as real and terrifying part of human history, but as a grotesque comic-book villain, rubbing its hands together and brooding as it plans to tie yet another damsel to the railroad tracks.

Finally, and most obviously, it's just extremely offensive. The Holocaust was a real thing real people lived through; bringing it up to make whatever silly point you may have denigrates the experiences of survivors and makes you look thoughtless, cruel, and out-of-touch.

Of course, there are undoubtedly situations where Nazism is the appropriate analogy, but this is exactly why we should use it so rarely. If you can think of any other argument out there that could a) work and b) doesn't mention swastikas or invading Poland, use it! We impoverish public discourse when we reach for the easiest, laziest, and most hyperbolic imagery to make our point. Passionately disagreeing with a policy or an ideology is one thing; reflexively attaching that position to the Most Evil People in the History of Mankind is another.

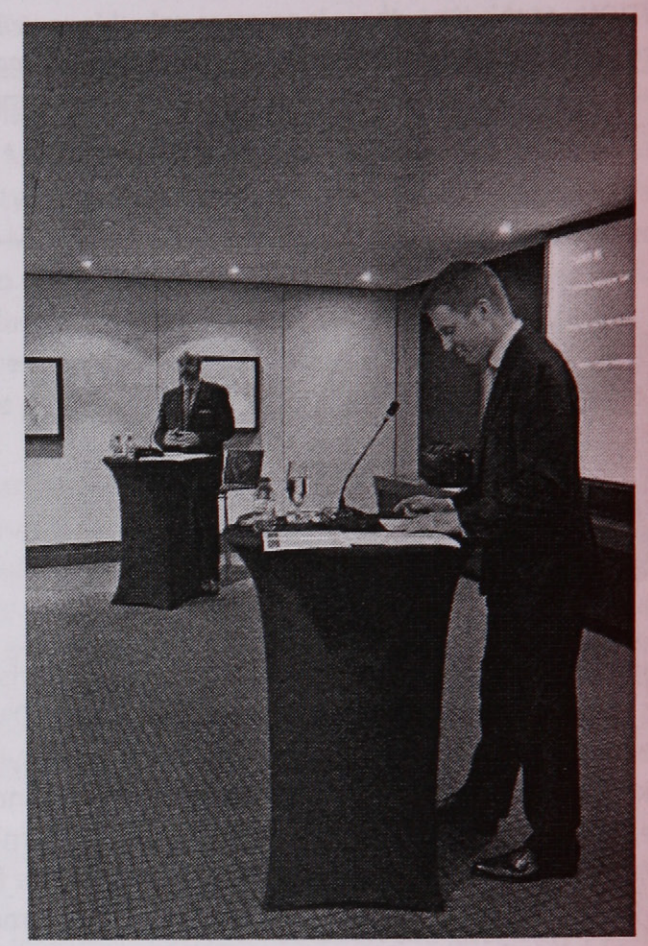
So I propose a boycott on Hitler, Nazi, or Holocaust analogies. The rule is simple: if you bring up Nazis, or Hitler, or the Holocaust, you officially lose the argument. It's done! Go home, think more carefully, and try again another day. Let's all try a little more subtlety and a lot more thoughtfulness when we offer our opinions. The Nazi analogy is just very, very, very, very, very dumb. Very.

JEAN-FRÉDÉRIC HÜBSCH

Law II

ARBITRATION ETHICS: A DYNAMIC DEBATE

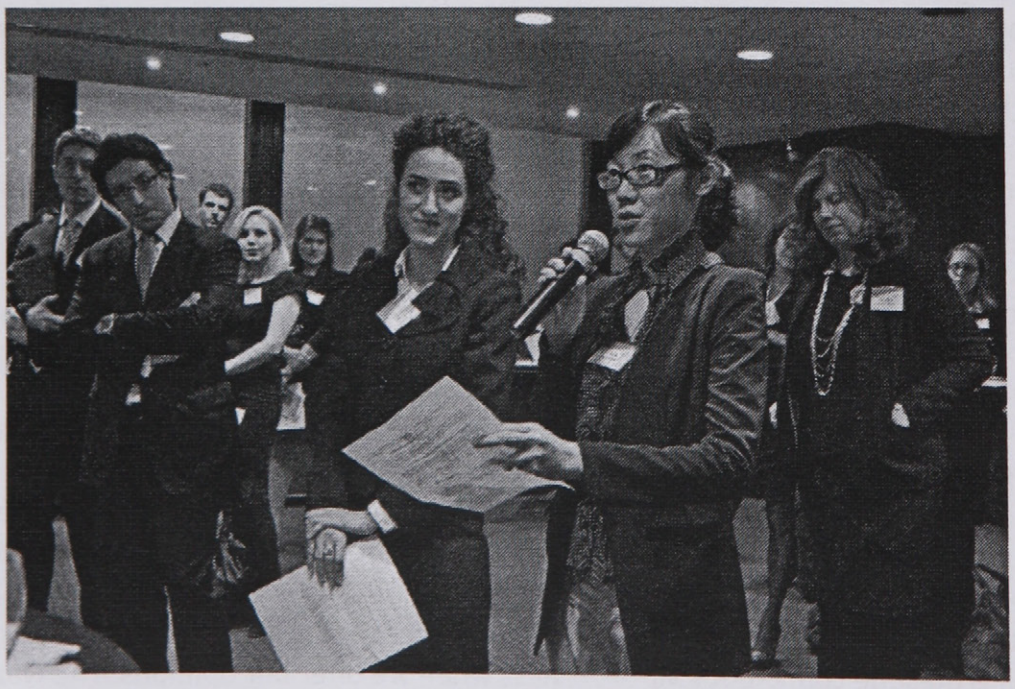
Two internationally renowned arbitration practitioners battled it out in a mock arbitration on Thursday October 25 in "Arbitration Ethics: How to Resolve Conflicting and Ethical Standards?" The McGill Arbitration Society was pleased to invite Henri Alvarez, Co-Chair of the International Arbitration Practice Group at Fasken Martineau in Vancouver, and Andrew McDougall, partner in the International Arbitration Practice at White & Case in Paris – with Professor Frédéric Bachand acting as moderator/arbitrator.



McGill law students and professionals in international arbitration from Canada and around the world attended the debate, held at the Fasken Martineau Montreal office. The debate followed a symposium organized by Young Canadian Arbitration Practitioners. After the debate,the International Chamber of Commerce (ICC) cocktail kicked off the 2012 ICC-Canada international arbitration conference held at McGill the next day.

With Mr. Alvarez acting as counsel from France for Seller Inc. and Mr. McDougall as counsel from the United States (Paris, Texas, specifically) for Buyer Inc. Four issues were raised over the course of the debate that demonstrated situations of conflicting ethical standards in international arbitration: 1) witness preparation, 2) contact with witnesses, 3) disclosure of privileged communications, and 4) settlement privilege.

The debate revolved around many questions. Whose ethical obligations should prevail? What practices should be acceptable in a transnational setting? What specific rules apply where national practices are diametrically opposed? While making arguments specific to each of these, broader questions around international arbitration also came to the fore: the meaning of fairness in proceedings, the import of "equality of arms", and, perhaps most prominently, the precise scope of the arbitrator's authority in ethical matters and in international arbitration more generally.



After both sides enthusiastically and convincingly presented their arguments, Professor Bachand turned to the crowd for input on the appropriate solution to each problem. Practitioners and students alike brought their insights to the particular issues, making reference to general ethical principles as well as the specific rules of the ICC and the International Bar Association. These interactions reflected the complex and conflicting nature of arbitration ethics, where it seems there are few right answers.

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Following the debate, attendees were invited to mingle at the ICC cocktail. Students and practitioners discussed the issues from the debate, made connections and learned more about the burgeoning world of international arbitration.

The McGill Arbitration Society thanks the LSA for funding to make this event possible.

OVERHEARD AT THE FAC

Prof: What is the source?
3L: Common law.
Prof: Yes, but give me an authority.
3L: Oh, you mean a case or something like that?
Prof: Well, yes that's usually what you do...

L1: So how was your last party? Was it debaucherous?
L2: Oh it was fun! But there wasn't much debauchery.
L3: Well, I bit someone!
L1: Really!?
L2: Really, you did that Saturday? [Remembering] That's true, you bite...
L3: Yeah! I bite, I scratch...
L2: Yeah, I wanted to have sex with her, but then I figured out I'd be better off with a racoon.

Prof, discussing tax case law: We'll refrain from going into any scatalogical discussion...

Prof: If the omnibus Anti-Terrorist Act was to be renamed by the Harper government, they would call it: "An Act to Prevent your Family from Getting Blown Up".

Prof, on running over a squirrel's tail with his bike on the way to work: I was not going fast, but he was going slow... If you're slow, you die.

Prof: I'm not here to hurt your feelings. At least not intentionally.

First 1L: Why did you go to Law School?
Second 1L: I want to be a judge.
First 1L: I can see you there.
Second 1L: I can see myself there!

Prof: It's possible to be a successful jerk. And I hate to tell you, but the successful/unsuccessful thing is more important than the jerk/non jerk thing.

3L: Are you going to watch the election results? There are a bunch of parties
3L: No, I haven't been invited to any! I'm not much of a people's person this year.
3L: I'm not much of a people's person ever! You used to be though, you have so many friends!
3L: Yeah, I hate them all now!

Grad: My friend saw you yesterday, and she told me that in terms of handsomeness, you were perfect.
2L: Really? Wow! I want to quote that in the quid [in my head: Too bad the quid is anonymous!]

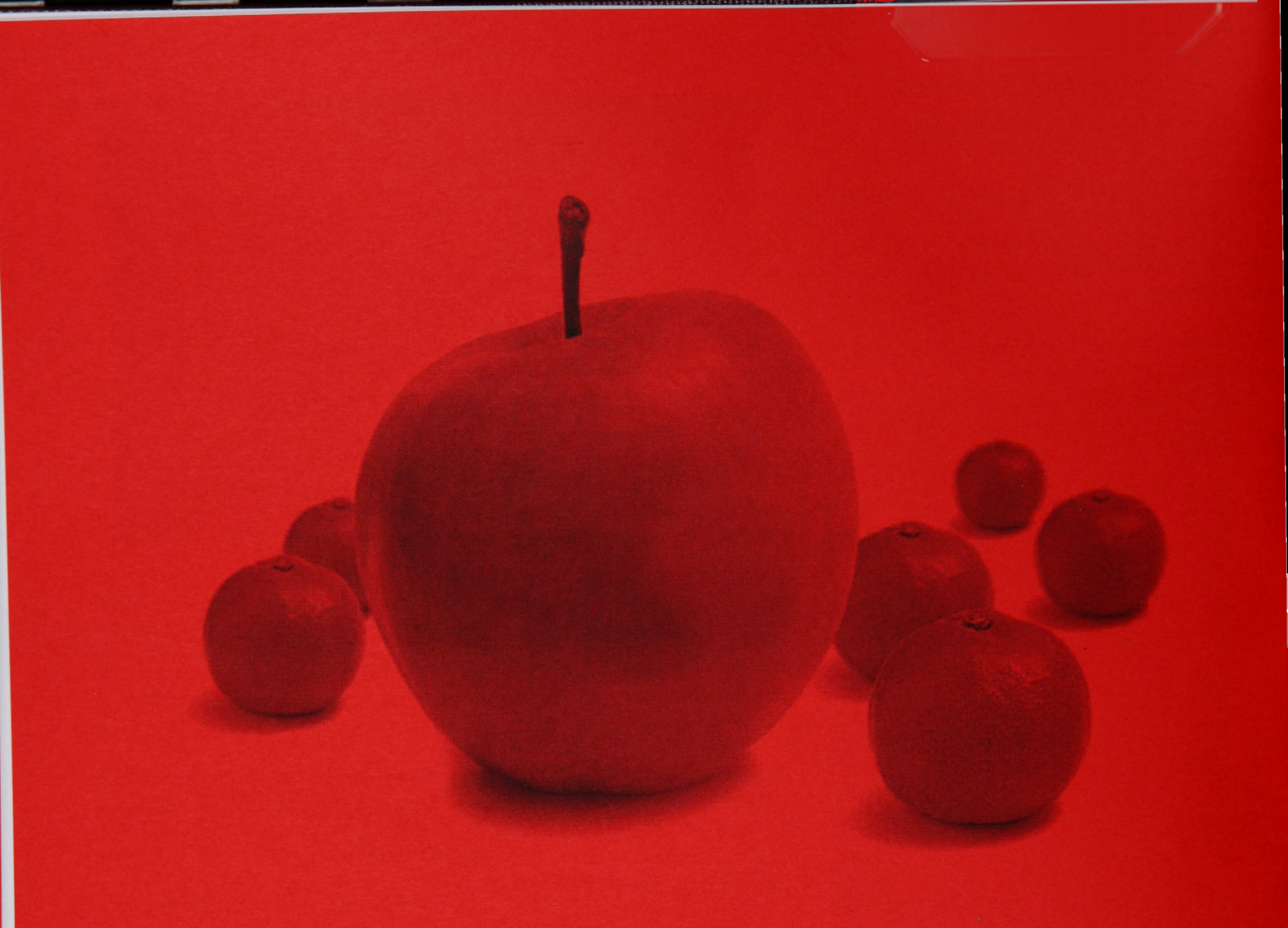
Prof: If I am here to teach you to pass mid-terms, then I am going to Starbucks and signing up tomorrow because that's a waste of my time.

L3: I think if we take your idea to the logical extreme...
Prof: This isn't starting out well.

Prof: If you're going to be a litigator, at some point you're going to come across a self-represented nutcase. In some cases they're right. They end up broke and divorced, but they end up right.
Prof: Make your claim reasonable. When you start your claim at 1 billion dollars you automatically come across as a crack-pot to the court.

Prof: When a guy makes you a pile of money, you normally say "Ah! I kiss you on both cheeks!" You don't normally say "I'll see you in court." But it turns out the trustee was sleeping with the beneficiary's wife. So... that's why this case exists.

SUBMIT OVERHEARDS!
quid.overheard@gmail.com



CHEZ NOUS, VOUS VOUS DÉMARQUEREZ

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